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UNITED STATES DEPARTMENT OF AGRICULTURE
BUREAU OF AGRICULTURAL ECONOMICS

AGREEMENT RELATIVE TO THE USE OF RECOMMENDED UNITED STATES STANDARD TRADING RULES FOR TRANSACTIONS IN FRESH FRUITS AND VEGETABLES

To extend to the fresh fruit and vegetable industry the principles of standardization in trade terms, practices, and methods of adjusting complaints, disputes, and claims, and generally to promote fair conduct in that industry, this agreement is made and entered into by and between the Secretary of Agriculture of the United States, hereinafter called the Secretary, and the undersigned dealer in, or shipper, distributor or handler of fresh fruits and vegetables, herein called the party of the second part, to become effective when signed by the party of the second part and countersigned by an authorized officer of the Bureau of Agricultural Economics of the United States Department of Agriculture.

A. The Secretary agrees to provide for the arbitration and adjustment of any controversy or claim arising under this and other identical agreements; to make public from time to time the names and addresses of persons and organizations who have signed such agreements, and to give to each of them a number and symbol which may be used on his business stationery and in his advertising.

B. The party of the second part agrees that, to the extent that such rules are not in conflict with the specific terms of the contract in any particular case, he will be governed by the Recommended United States Standard Trading Rules set forth following this paragraph and hereby made a part hereof, and will keep such books and records as will show that he has conformed to them in the conduct of his business, and/or that he has fully and properly discharged his duties as an agent. He further agrees to allow any authorized representative of the Secretary to inspect such books and records as may be material in passing upon the merits of complaints made or arbitrations requested in accordance with the terms hereof. He further agrees that in case of arbitration by any of the methods specified or referred to herein, or by any other method of arbitration agreed to by the parties in interest, he will settle any such case, claim, or controversy in accordance with the result of such arbitration. He further agrees that, when he desires to refer to this agreement and cooperation on his stationery and other printed material, and in his advertising, he will use only the number and symbol given him by the Secretary and/or the following: "I (or "we" or his name) have entered into an agreement with the United States Department of Agriculture relative to the use of the Recommended United States Standard Trading Rules for transactions in fresh fruits and vegetables," and he also agrees that he will not use said number and symbol and/or the statement given above in such a way as to convey a false or misleading impression.

RECOMMENDED UNITED STATES STANDARD TRADING RULES

Nothing in these rules shall be construed to limit the right of contract nor to preclude agreements or contracts containing terms of sale different from those herein provided.

Calendar dates shall be used, wherever practicable, to specify when shipments must be made, will be made, or have been made.

Sundays and legal holidays shall not be included in computation of time in connection with these rules and definitions, except in "To-day's shipment."

NOTE.—Cross references, where shown, are inserted solely for the convenience and assistance of users, and do not in any sense change the intent or terms of these rules.

No. 1. "To-day's shipment" means that the goods shall be under billing for movement scheduled by the transportation company on the day the communication using the term is dated.

No. 2. "To-morrow's shipment" means that the shipment shall be under billing for movement scheduled by the transportation company on the first day after the day the communication using the term is dated.

No. 3. "Immediate shipment" shall permit of 24 hours longer than "To-day's shipment."

No. 4. "Quick shipment" shall permit of 48 hours longer than "To-day's shipment."

No. 5. "Prompt shipment" shall permit of 72 hours longer than "To-day's shipment."

No. 6. "Shipment first or early part of week" means that goods shall move as provided in No. 1 on Monday or Tuesday of week specified.

No. 7. "Shipment middle of week" means that goods shall move as provided in No. 1 on Wednesday or Thursday of week specified.

No. 8. "Shipment last or latter part of week" means that goods shall move as provided in No. 1 on Friday or Saturday of the week specified.

No. 9. "Shipment as soon as possible or as soon as cars can be secured" means that shipper is uncertain as to when the shipment can be made, but expects to make it within a reasonable time and will make it as soon as possible. The buyer shall, at any time after 12 days from date the order is given, have the right to cancel the order or contract of sale, provided notice of his decision so to cancel shall have been received by the shipper before shipment has been made.

No. 10. "Future sales or purchases." Sales or purchases made for future shipment or delivery shall be under written contract, stating as near as practicable the date or dates of shipment, together with grades, terms, etc. (See No. 27.)

No. 11. "F. o. b. sales or quotations" means that the commodity quoted or sold is to be placed free on board the car, or at ship side at shipping point, in suitable shipping condition, and that the buyer assumes all risks of damage in transit not caused by the shipper even though the bill of lading is to the shipper or his order. The duty to procure cars shall be on the seller. (See Nos. 21, 22, and 24.)

No. 12. "Delivered sales or quotations" means that the commodity quoted or sold is to be delivered by the seller on board car, or on dock if delivered by boat, free of any and all charges for transportation or protective service, at the market in which the buyer is located, or at such other market as agreed upon, the seller assuming all risks of damage in transit not caused by buyer. (See Nos. 22 and 24.)

No. 13. "In transit or rolling car sales" means that the commodity quoted has been in possession of the transportation company and under movement from shipping point prior to the day on which the quotation is made, and that the car is moving over a route in direct line of haul between the point of origin and the market quoted. Every order for a sale of commodities so contracted shall relate back to the time of issuance of the bill of lading by the transportation company, and shall have the same force and effect in every respect as if given or made prior to the issuance of such bill of lading. If sold f. o. b. shipping point, the buyer assumes only the lowest authorized all-rail freight charges applicable between point of origin and the destination stated in the contract of purchase, together with car rental, refrigeration, and heater charges, if any; provided that the kind and extent of the protective service required by shipper's instructions to the carriers are specified in the contract. But the buyer shall not assume any demurrage, storage, detention,

icing, or heating charges, or diversion or reconsigning charges, that would not have accrued had the car been originally shipped direct to the destination provided in the contract of purchase.

If the carrier fails to accomplish diversion when properly notified, and such notification is duly acknowledged by the carrier, the contract of sale shall become null and void unless otherwise specifically provided. Either party to the contract shall immediately notify the other of any knowledge or belief that carrier had failed to make the diversion.

The seller shall specify, when quoting or offering to sell, the date and place or district of shipment, type of car in which shipment was loaded, character and extent of protective service instructed, and, if possible, the approximate location of the car. (See Nos. 11 and 12.)

No. 14. "Tramp car sales" means that the commodity quoted has left the shipping point under a bill of lading issued prior to the day on which the quotation is made and has moved or is moving over a route out of line of haul with the market quoted. The rules applying to "In transit or rolling car sales" shall also apply to "Tramp car sales" except as to definition of the term. (See No. 13.)

No. 15. "Track sales." When a commodity is sold on track after arrival at destination, the buyer shall be considered to have waived any right to reject the commodity so purchased upon receipt by him, or his duly authorized representative, from the seller or his duly authorized representative, of the bill of lading, delivery order, or other document enabling him to get the goods from the carrier.

The foregoing shall not be construed as depriving the buyer of a right to reparation when the unloading of the car shall demonstrate that a material part of the lading which was not accessible to inspection was of a quality or condition actually and not merely technically inferior to that portion which was accessible to inspection; but any such claim for reparation must be made within 24 hours after receipt of delivery order or bill of lading. (See Nos. 26 and 27.)

(Note 15A.) To avoid delay, telegraphic orders to deliver cars sold on track should be sent to the carrier, and the buyer should be so advised by wire. Where a bank holds the bill of lading, the buyer should be notified that instructions have been sent to the bank.

(Note 15B.) When wiring an order to deliver a car sold on track, it is advisable to have the telegram repeated so as to be sure that it has been received and that there have been no errors in transmission.

No. 16. "C. A. F. sales" (cost and freight) are the same as f. o. b. sales, except that the selling price includes the correct freight charges to destination, tax, if any, included.

No. 17. "C. A. C. sales" (cost and charges) are the same as f. o. b. sales, except that the selling price includes the correct freight, icing, or heating charges to destination, tax, if any, included.

No. 18. "C. I. F. sales" (cost, insurance, and freight) are the same as f. o. b. sales, except that the selling price includes insurance and the correct freight charges to destination, tax, if any, included.

No. 19. "Delayed or deferred shipments and deliveries." Where, in a sale or contract of sale, the date for shipment or delivery is provided for either expressly or by means of the use of any of the terms herein defined, and it is impossible for reasons beyond the control of the seller to make shipment or delivery as agreed, the seller shall immediately advise the buyer by wire, stating the causes thereof and the earliest possible specific or approximate date on which shipment or delivery can be made, and the buyer thereupon shall immediately advise the seller by wire as to whether or not he still desires to have his order filled. This paragraph is not intended to deprive the buyer of any rights to damages which he may have.

(Note 19A.) In cases where, through error or misunderstanding, shipment may have been made at a date later than that contracted for, the buyer should, on receipt of knowledge, either by wire or mail, of such shipping date, immediately notify the seller by wire, if the shipping date is unsatisfactory. It is obvious that failure to do so is a violation of good business ethics.

No. 20. "A quotation of price" given by the seller to the buyer is not an offer to sell, but only an invitation for an order or offer to buy, even though the party quoting actually owns or has the goods and makes the quotation in person. The sale or contract of sale is not completed until the seller or his authorized agent has accepted the order. After acceptance of an order neither party has the right to cancel without the consent of the other party.

(Note 20A.) To avoid misunderstandings, it is essential that the language used in quoting prices or making offers be unequivocal.

(1) When a seller desires to solicit orders by quoting prices, he should use the words "we quote."

(2) When he intends to make a definite offer to sell, he should use the words "we will sell."

(3) When quoting, selling, or buying, the words "Government rules" should be included in the wire to indicate that the transaction is subject to these standard trading rules.

(Note 20B.) It is unnecessary, when quoting prices, as distinguished from offering to sell, to give notice that "all quotations are subject to changes in market price and to the goods being unsold on receipt of order" or "subject to confirmation," but the practice is recommended because it helps to make clear to prospective buyers that the quotations are not offers to sell but only invitations for offers to buy.

(Note 20C.) It should be borne in mind at all times that if the party to whom an offer is made does not accept it exactly as made to him there is no contract and his modified acceptance amounts only to a counter offer.

It should also be borne in mind that to complete a contract a definite offer to buy or sell must be accepted within a reasonable time.

No. 21. "Protective service." In shipping perishable commodities, where the contract is not specific as to protective service, the buyer shall be consulted, and if he remains silent the shipper shall be governed by the exigencies of the weather and temperature conditions, and, further, shall issue such instructions to the carrier as will provide the requisite protection. The buyer shall not, in such case, dispute the wisdom or necessity for such protective measures or the attendant charges therefor.

No. 22. "Minimum and maximum loading." Under these definitions, quotations and sales involving movement in carlots, and when quantity is not specified, shall be based upon a minimum as to quantity of carrier's tariff minimum requirements and a maximum not exceeding 20 per cent over said tariff minimum.

No. 23. "Contract of sales." Whenever practicable, every contract of sale shall be in writing setting forth specifically all the terms and conditions of sale and signed by the buyer and seller or their duly authorized agents or brokers. (See No. 27.)

Whenever sales are made through an established broker, the broker shall issue a sales ticket in duplicate signed by himself as broker and giving the buyer's and seller's names and addresses and the terms and conditions of sale. A copy of the sales ticket shall be transmitted without delay to both buyer and seller.

No. 24. "Seller's nonfulfillment of contract." Shipper shall not ship or deliver goods which are not in accordance with the contract of sale. If he is unable to fulfill his contract, he shall notify the buyer, giving the reasons therefor, and if such failure to fulfill is due to causes beyond his control as recognized by law, the contract shall automatically be canceled; but the seller shall propose such substitution as he may have to offer. The buyer shall have his option as to accepting the substitution, which option shall be promptly exercised. In the event of acceptance a new contract is thereby created. (See No. 27.)

No. 25. "Arrival at destination." A shipment shall be deemed to have reached destination when placed by the railroad on its recognized produce team track, or on private unloading track at destination, in accordance with billed delivery (if any), or where awaiting consignee's order for placement. The burden of locating a shipment on arrival shall be on the consignee, provided the consignor has billed the shipment with proper instructions to the railroad relative to notifying the consignee. The failure of the railroad to notify the consignee shall not release the consignee from his obligations to the consignor, provided proper advice as to the shipment, including routing, car number, and initials of the car in which the shipment was originally made, has been given to the consignee by the consignor.

NOTE.—The term "consignee" as here used shall be construed to include the "notify" or "advise" party, in the case of shipments billed to order of the consignor or billed to the shipper.

No. 26. "Complaints and adjustments." When the commodity shipped is below contract, the buyer shall promptly, according to the perishability of the commodity, but in every case within 24 hours after the shipment has been placed where inspection is practicable, notify the seller (by wire where possible), or the seller's local representative, of refusal to accept the shipment, or, in like manner, shall submit to the seller or his local representative a counter offer. If the counter offer is accepted, the new contract shall supersede all preceding contracts. If the counter offer is not accepted and the car is rejected outright, the buyer is entitled to such damages against the seller for failure to perform his contract as the facts may warrant.

In the case of rejection or a counter offer, it is the duty of the buyer to obtain official inspection if possible. If such official inspection is not possible, the buyer shall furnish the seller with such other records and testimony as will serve to substantiate the buyer's action.

Except as may be required for the proper inspection of the lading at the car, the removal of goods from the car by consignee shall constitute acceptance. In the event that false or fraudulent loading or packing shall develop during the process of unloading, the buyer shall immediately notify (by wire if possible) the seller or his agent. Acceptance of goods under such conditions shall not serve as a bar to recovery under such breach of contract.

The buyer shall not unjustifiably reject fresh fruits or vegetables. Delay in transit shall not of itself justify rejection unless specific delivery date has been contracted for.

No. 27. "Official grade terms." The commodity offered or sold shall be stated in terms of the official grades of a State or of the United States whenever these grades will reasonably describe the product, or under established or known private brands based on written specifications or under other specific grade and quality descriptions.

No. 28. "Arbitration." The following methods of arbitration are not to be deemed exclusive, but the parties in interest may arbitrate in any other way that may be mutually agreed upon: When a buyer and a seller, either one or both of whom have entered into an agreement with the Secretary identical with this agreement, are unable to agree on an adjustment of a claim based on an interpretation of the terms of sale or purchase of perishable commodities, or as to the condition, quality, or grade of such commodity or commodities, the party who has entered into the agreement with the Secretary or either one of them when both are parties to the agreement, may propose to arbitrate their differences before any national trade association of which either one or both are members, under the arbitration rules of such association, or before a regular recognized and established credit and rating agency providing such service, and under its arbitration rules or before the Secretary.

If the proposal to arbitrate is acceptable to both parties, they shall enter into a written mutual agreement to arbitrate their difference before the agency selected and to abide by the final arbitration award when the arbitration is conducted as provided by the rules of the agency selected.

When the principals in the controversy can not agree between themselves as to a method of arbitration, or in the event the national trade association or regular recognized and established credit and rating agency is unwilling or finds it impossible to accept the case for arbitration, then the matter may be referred by mutual agreement of the parties to the Secretary for arbitration to be handled in accordance with the rules provided by him for such purposes.

No. 29. "Arbitration by the Secretary or departmental board." The Secretary shall select seven or more persons and make public their names, any three of whom

may act in any case submitted, or the contestants may, if they so desire, designate one person of the group named by the Secretary to act as sole arbitrator. When one person is selected it shall be mutually agreed to in a writing signed by both parties to the arbitration.

Either party to the controversy may object to any one member of the board when more than one person is named to hear the case, in which event such member or members shall be ineligible to serve on that case.

In all cases the actual contract or agreement between the parties shall be made the basis of the arbitration. These rules shall apply in the absence of any provision in conflict therewith.

The parties to the controversy shall submit their case complete and in writing accompanied by the necessary documentary evidence to support their contention. The arbitrators acting under the authority of the Secretary shall have the right to call for documents or information and to examine witnesses or take depositions or demand affidavits if deemed necessary to a proper determination of the question at issue. Arbitrators shall submit their findings promptly with a full and clear statement of facts and conclusions suitable for subsequent use in court, if necessary.

An appeal from an arbitrator or board of the Department of Agriculture to the Secretary, or to such board of appeal or review as he may designate, may be taken by either party within thirty days from the receipt of a copy of the findings and award. The decision on such appeal shall be final, unless modified or set aside by a court of competent jurisdiction. The Secretary will not entertain appeals from the decision of any arbitration board of any national trade association or regular, recognized, and established credit and rating agency upon which the parties to the controversy may have first agreed. If both parties desire to reopen such a case before the Secretary, they shall mutually agree in a signed writing to that effect, whereupon the matter shall be presented in accordance with the rules established by the Secretary and as a new case, and the findings of the previous arbitrators shall not be submitted as a part thereof.

The Secretary may publish from time to time the findings or awards of the arbitrators or boards of the Department of Agriculture.

No. 30. "Investigation of grievances in connection with purchases and sales." Upon properly supported complaint to the Department of Agriculture by one party of the second part against another (or by a person or organization not eligible to sign this agreement) for failure to comply with the provisions of this agreement involving the purchase or sale of goods, or alleging any dishonesty in connection with such purchase or sale, the Secretary may exercise the right to inspect such records through any authorized representative as may be material for the purpose of determining the propriety of continuing the agreement with the party complained of. As the result of such investigation the Secretary may, after notice and opportunity for a hearing, reprimand the offending party or terminate the agreement with him; provided that before public notice of any such action is given the offending party shall have the right to appeal to the Director of Regulatory Work.

No. 31. "Investigation of grievances in connection with purchases and sales on commission or through brokers." On a properly supported complaint by person directly interested in the sale or purchase of fresh fruits and vegetables on commission or through a broker against the honesty or integrity of the commission merchant, broker, or other agent negotiating such sales or purchases, and upon notice to such party and of opportunity to be heard, the Secretary, through any authorized representative, will investigate such complaint if the person complained of has entered into an agreement with the Secretary identical with this agreement, and if any dishonesty or lack of integrity shall be clearly found on the part of such commission merchant, broker, or other agent, the Secretary may reprimand such party, may suggest the reparation or restitution to be made, and shall notify such party if he proposes to cancel the agreement of such party with him or to publish his decision or any part of his findings. The party of the second part shall then have the right of appeal to the Director of Regulatory Work before any such publication is made.

No. 32. "Charges." There shall be a minimum charge of \$15 for arbitration under the authority of the Secretary, with a general maximum charge of \$25 to be paid by the party adjudged to be at fault or apportioned to the parties to the controversy as the arbitrator or board may deem equitable. The Secretary reserves the right to make a higher charge, on notice to the principals and after giving them an opportunity to withdraw the case, if upon examination it appears that for any reason the case will require unusual time, labor, or expense on the part of the Secretary.

C. It is mutually agreed that the Secretary may cancel this agreement on 10 days' notice, if it is found, upon investigation, that the party of the second part has violated any of the provisions hereof, has misrepresented the terms of this agreement, or has failed to make a satisfactory settlement of any claim, dispute, or complaint which has been passed upon by the Secretary or by any of the agencies for arbitration specified or referred to herein, or which has been arbitrated in any other way by mutual agreement. The party of the second part may terminate this agreement on 10 days' written notice to the Secretary, but, in such event, he shall settle in accordance with this agreement any controversy, complaint, or dispute which has arisen, or may arise, concerning any transaction occurring prior to the hour of the receipt of such notice by the Secretary. The Secretary may publish the fact of such cancellation or termination and the reasons therefor, either separately or with the names of other parties whose agreements, identical with this one, have been canceled or terminated.

Date signed: _____, 192 .

(Signature of party of the second part.)

Address: _____

Countersigned:

W. M. Jardine
Secretary of Agriculture.

Acting Chief, Bureau of Agricultural Economics.

Date countersigned: _____, 192 .

